

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

RICHMOND, VIRGINIA

McELROY COAL COMPANY,)
)
Petitioner,) FOURTH CIR. NO.: 15-1322
)
v.)
)
ROGER D. KENNEDY,)
)
Respondent,)
)
and)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED))
STATES DEPARTMENT OF LABOR,)
)
Statutory Respondent.)
)

**MCELROY COAL COMPANY'S MOTION TO FILE
CONSOLIDATED REPLY BRIEF**

This matter is currently pending before the United States Court of Appeals for the Fourth Circuit on the appeal filed by McElroy Coal Company, following the award of benefits issued by Administrative Law Judge Larry S. Merck. On July 6, 2015, McElroy Coal received Mr. Kennedy's brief in response to McElroy Coal's petition for review. Docket Entry ("DE") 37. The deadline for filing reply briefs in this case is July

20, 2015. *See* DE 5. On November 1, 2015, the Director's counsel moved to file a separate response brief. DE 33. The Court granted the motion on July 2, 2015 and allowed the Director until August 7, 2015 to file his brief. DE 35.

Due to the circumstances of this case, which will involve separate response briefs filed by the two Respondents, McElroy Coal requests that it be allowed to file a single consolidated brief in reply to the response already filed by Mr. Kennedy and in reply to any response later filed by the Director.

A consolidated reply brief will allow the Court to consider McElroy Coal's reply to Mr. Kennedy's and the Director's responses in a single document, aiding to resolve this matter as expeditiously and as economically as possible.

Pursuant to Loc. R. 27(a), counsel for the other parties to this appeal, Anne M. Davis, counsel for Mr. Kennedy, and Emily Goldberg-Kraft, counsel for the Director, have been contacted and do not object to this motion.

Accordingly, McElroy Coal requests that it be given until 14 days after receipt of the Director's response brief, or 14 days after such time the Director indicates that he does not intend to file a response brief, to file its consolidated reply brief.

Respectfully submitted,

McELROY COAL COMPANY,

By Counsel,

/s/ Jeffrey R. Soukup
Jeffrey R. Soukup
Kentucky Bar No. 92029
Jackson Kelly PLLC
175 E. Main St., Ste. 500
Lexington, KY 40507
(859) 255-9500

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing

McELROY COAL COMPANY'S MOTION TO FILE A CONSOLIDATED

REPLY BRIEF was served electronically through CM/ECF, or as

otherwise indicated, this **15th** day of July, 2015.

Electronic:

Patricia S. Connor, Clerk of the Court
U. S. Court of Appeals for the Fourth Circuit
Lewis F. Powell, Jr. United States Courthouse
Annex
1100 East Main Street, Suite 501
Richmond, VA 23209-3517

Anne Megan Davis, Esq.
Johnson Jones
36 S. Wabash Ave., Ste. 1310
Chicago, IL 60603
adavis@jjsgd.com

Gary K. Stearman, Esq.
Emily Goldberg-Kraft, Esq.
U. S. Department of Labor
Office of the Solicitor
200 Constitution Avenue, N.W., Suite N-2117
Washington, DC 20210
blls-sol@dol.gov

*/s/ Jeffrey R. Soukup
Counsel for McElroy Coal Company*